### **EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

Page 1 of 4

**DOCKET NO.:** 2006-1983-PST-E **TCEQ ID:** RN100890979 **CASE NO.:** 32134 **RESPONDENT NAME:** S & S USA Enterprises, Inc. dba Berry Food Store

ORDER TYPE:		
X_1660 AGREED ORDER	FINDINGS AGREED ORDER	FINDINGS ORDER FOLLOWING SOAH HEARING
FINDINGS DEFAULT ORDER	_SHUTDOWN ORDER	IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
AMENDED ORDER	EMERGENCY ORDER	
CASE TYPE:		
AIR	MULTI-MEDIA (check all that apply)	INDUSTRIAL AND HAZARDOUS WASTE
PUBLIC WATER SUPPLY	$\underline{X}$ PETROLEUM STORAGE TANKS	OCCUPATIONAL CERTIFICATION
WATER QUALITY	SEWAGE SLUDGE	UNDERGROUND INJECTION CONTROL
MUNICIPAL SOLID WASTE	RADIOACTIVE WASTE	DRY CLEANER REGISTRATION
TYPE OF OPERATION: Convenience sto  SMALL BUSINESS: _X Yes  OTHER SIGNIFICANT MATTERS: Therefacility location.  INTERESTED PARTIES: No one other the COMMENTS RECEIVED: The Texas Reg  CONTACTS AND MAILING LIST:  TCEQ Attorney/SEP Coordinator  TCEQ Enforcement Coordinator  Steven Lopez, Enforcement Division Respondent: Mr. Mohammed Isma	There is no record of additional and the ED and the Respondent has expressed an interister comment period expired on June 11, 2007. Note:  None  Ms. Deana Holland, Enforcement Division, Enforcement	rest in this matter.  comments were received.  cement Team 1, MC 169, (512) 239-2504; Mr.

#### **VIOLATION SUMMARY CHART:** CORRECTIVE ACTIONS PENALTY CONSIDERATIONS VIOLATION INFORMATION TAKEN/REOUIRED **Ordering Provisions:** Type of Investigation: Total Assessed: \$13,950 Complaint The Order will require the Respondent to: X Routine Total Deferred: \$2,790 \_\_\_ Enforcement Follow-up X Expedited Settlement a. Immediately upon the effective date of Records Review \_\_Financial Inability to Pay this Agreed Order: . 1991 122 1 Date(s) of Complaints Relating to this i. Cease accepting fuel until such Case: None SEP Conditional Offset: \$0 time as a valid delivery certificate is obtained from the Date of Investigation Relating to this Case: Total Paid (Due) to General Revenue: TCEO by submitting a properly October 13, 2006 \$310 (remaining \$10,850 due in 35 monthly payments of \$310 each) completed UST registration and self-certification form; Date of NOV/NOE Relating to this Case: Site Compliance History Classification November 9, 2006 (NOE) ii. Begin maintaining Stage II X High Average Poor records; and Background Facts: This was a routine investigation. Sixteen violations were **Person Compliance History Classification** iii. Begin conducting effective documented. X High Average Poor manual or automatic inventory control procedures for the UST. Major Source: Yes X No WASTE b. Within 30 days after the effective date 1) Failed to maintain all required Stage II Applicable Penalty Policy: September 2002 of this Agreed Order: records on-site and make immediately available for review upon request by a TCEO i. Begin conducting required representative. Specifically, S & S USA daily and monthly inspections of failed to maintain a copy of the California the Stage II vapor recovery Air Resources Board (CARB) Executive Order(s) for the Stage II vapor recovery system; system, maintenance log for all repairs ii. Conduct training to make conducted, Stage II test results, and every employee aware of the employee training records at the Station [30 purposes and correct operation TEX. ADMIN. CODE § 115.246(1), (3), (5) and (7)(A) and Tex. HEALTH & SAFETY CODE § procedures of the Stage II System: 382.085(b)]. iii. Conduct the annual testing of 2) Failed to conduct daily and monthly the Stage II equipment; inspections of the Stage II vapor recovery system [30 Tex. ADMIN. CODE § 115.244(1) iv. Post operating instructions and (3), and Tex. HEALTH & SAFETY CODE § conspicuously on the front of 382.085(b)]. each dispenser equipped with a Stage II system; 3) Failed to make each employee aware of the purposes and correct operation procedures of the Stage II equipment. v. Implement a corrosion protection method for all USTs Specifically, S & S USA failed to ensure that at the Station; and at least one Station representative receives training and instruction in the operation and vi. Implement a release detection maintenance of the Stage II vapor recovery method for all USTs at the system within three months of departure of the previously trained employee [30 Tex. Station. ADMIN. CODE § 115.248(1) and TEX. HEALTH c. Within 45 days after the effective date & SAFETY CODE § 382.085(b)]. of this Agreed Order, submit written certification and include detailed

**DOCKET NO.:** 2006-1983-PST-E

4) Failed to verify proper operation of the
Stage II equipment at least once every 12
months [30 Tex. ADMIN. CODE § 115.245(2)
and Tex. Health & Safety Code §
382.085(b)].
0 0 2 1 0 0 0 (0)].

- 5) Failed to post operating instructions conspicuously on the front of each dispenser equipped with a Stage II system. Specifically, at the time of the investigation the proper operating instructions were not observed on any dispensers [30 Tex. ADMIN. CODE § 115.242(9) and Tex. Health & Safety Code § 382.085(b)].
- 6) Failed to provide proper corrosion protection for all underground storage tanks ("USTs") [30 Tex. Admin. Code § 334.49(a) and Tex. Water Code § 26.3475(d)].
- 7) Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components were operating properly [30 Tex. ADMIN. CODE § 334.49(c)(2)(C) and Tex. WATER CODE § 26.3475(d)].
- 8) Failed to inspect and test the cathodic protection system for operability and adequacy of protection at least once every three years [30 Tex. Admin. Code § 334.49(c)(4) and Tex. Water Code § 26.3475(d)].
- 9) Failed to provide a release detection method capable of detecting a release from any portion of the UST system which contained regulated substances [30 Tex. Admin. Code § 334.50(a)(1)(A) and Tex. Water Code § 26.3475(c)(1)].
- 10) Failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) [30 Tex. ADMIN. CODE § 334.50(b)(1)(A) and Tex. WATER CODE § 26.3475(c)(1)].
- 11) Failed to provide release detection for the piping associated with the UST system [30 Tex. Admin. Code § 334.50(b)(2) and Tex. WATER CODE § 26.3475(a)].
- 12) Failed to test the line leak detectors at least once per year for performance and operational reliability. Specifically, the line leak detectors had not been performance tested annually [30 Tex. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and Tex. WATER CODE § 26.3475(a)].

supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a.i. through b.vi.

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# RESPONDENT NAME: S & S USA Enterprises, Inc. dba Berry Food Store DOCKET NO.: 2006-1983-PST-E

- 13) Failed to conduct effective manual or automatic inventory control procedures for the UST involved in the retail sale of petroleum substances used as a motor fuel [30 Tex. ADMIN. CODB § 334.48(c)].
- 14) Failed to provide written notice of any change or additional information to the Commission within 30 days from the date of the occurrence of the change or addition, or within 30 days of the date on which the owner or operator first becomes aware of the change or addition. Specifically, S & S USA did not update the registration information to reflect the current operator information [30 Tex. Adding. Code § 334.7(d)(3)].
- 15) Failed to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date of the delivery certificate. Specifically, the delivery certificate expired on January 31, 2006 [30 Tex. Admin. Code § 334.8(c)(4)(B) and (c)(5)(B)(ii)].
- 16) Failed to make available to a common carrier a valid, TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs. Specifically, one fuel delivery was accepted without a delivery certificate [30 Tex. ADMIN. CODE § 334.8(c)(5)(A)(i) and Tex. WATER CODE § 26.3467(a)].

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Policy Revision 2 (Septer	Penalty Calculation	worksheet (P	•	lovember 17, 2006
TCEQ DATES Assigned	13-Nov-2006			
	20-Nov-2006 Screening 18-Nov-2006	EPA Due		
RESPONDENT/FACILITY I Respondent S Reg. Ent. Ref. No. F Facility/Site Region 1	S & S USA Enterprises, Inc. dba Berry Food RN100890979	Store  Major/Minor Source	Minor	
)	2-110051011	Major/Millior Source	IVIII 101	
	2006-1983-PST-E Petroleum Storage Tank	No. of Violations Order Type Enf. Coordinator EC's Team	1660	
	Penalty Calculate	tion Section		
TOTAL BASE PENALT	TY (Sum of violation base penalties		Subtotal 1	\$15,500
ADJUSTMENTS (+/-) T	O SUBTOTAL 1			
Subtotals 2-7 are obtaine Compliance Histor	ed by multiplying the Total Base Penalty (Subtotal 1) by try -10%	Enhancement Subt	otals 2, 3, & 7	-\$1,550
Notes	Reduction for high performer of	classification.		
Culpability	No 0%	Enhancement	Subtotal 4	\$0
Notes	The respondent does not meet the	culpability criteria.		
Good Faith Effort	to Comply 0%	Reduction	Subtotal 5	\$0
Extraordinary Ordinary N/A	Before NOV NOV to EDPRP/Settlement Offer  X (mark with x)			
Notes	The respondent does not meet the	good faith criteria.		
		Enhancement* at the Total EB \$ Amount	Subtotal 6	\$0
SUM OF SUBTOTALS	1-7		Final Subtotal	\$13,950
	JUSTICE MAY REQUIRE  [ btotal by the indicated percentage. (Enter number only,	e.g30 for -30%.)	Adjustment	\$0
Notes	And the second s			
-		Final Pe	nalty Amount	\$13,950
STATUTORY LIMIT A	DJUSTMENT	Final Asse	essed Penalty	\$13,950
DEFERRAL Reduces the Final Assessed Pena	ilty by the indicted percentage. <i>(Enter number only;</i> e.g.	20% Reduction 20 for 20% reduction.)	Adjustment	-\$2,790
Notes	Deferral offered for expedited	l settlement.		

PAYABLE PENALTY

\$11,160

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Policy Re	evision 2 (Sep	tember 2002)
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Screening Date 18-Nov-2006 Docket No. 2006-1983-PST-E Respondent S & S USA Enterprises, Inc. dba Berry Food Store

Case ID No. 32134

Reg. Ent. Reference No. RN100890979

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Deana Holland

**Compliance History Worksheet** >> Compliance History Site Enhancement ( Component Number of... Enter N Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria) NOVs Other written NOVs Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria) Orders Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting Judgments criteria) and Consen Any adjudicated final court judgments and default judgments, or non-adjudicated final court Decrees judgments or consent decrees without a denial of liability, of this state or the federal Any criminal convictions of this state or the federal government (number of counts) Convictions Emissions Chronic excessive emissions events (number of events) Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of 0% O audits for which notices were submitted) Audits Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege n 0% Act, 74th Legislature, 1995 (number of audits for which violations were disclosed) Please Enter Yes or No Environmental management systems in place for one year or more No 0% Voluntary on-site compliance assessments conducted by the executive director under a Nο 0% special assistance program Other Participation in a voluntary pollution reduction program No 0% Early compliance with, or offer of a product that meets future state or federal government No 0% environmental requirements Adjustment Percentage (Subtotal 2) >> Repeat Violator (Subtotal 3) Adjustment Percentage (Subtotal 3) Adjustment Percentage (Subtotal 7) High Performer >> Compliance History Summary Compliance Reduction for high performer classification. History Notes Total Adjustment Percentage (Subtotals 2, 3, & 7)

Screening Date 18-Nov-2006 Docket No. 2006-1983-PST-E	PCW
Respondent S & S USA Enterprises, Inc. dba Berry Food Store	Policy Revision 2 (September 2002)
Case ID No. 32134	PCW Revision November 17, 2006
Reg. Ent. Reference No. RN100890979  Media [Statute] Petroleum Storage Tank	
Enf. Coordinator Deana Holland	
Violation Number 1	
Rule Cite(s) 30 Tex. Admin. Code § 115.246(1), (3), (5) and (7)(A) and Tex. Health & Safety (	Code §
Failed to maintain all required Stage II records on-site and make immediately av for review upon request by a TCEQ representative. Specifically, the respondent to maintain a copy of the California Air Resources Board (CARB) Executive Orde the Stage II vapor recovery system, maintenance log for all repairs conducted, S test results, and employee training records at the Station.	failed r(s) for
Base P	enalty \$10,000
>> Environmental, Property and Human Health Matrix	
Harm Palacas Major Major Miner	
Release Major Moderate Minor OR Actual	
Potential Percent 0%	
>>Programmatic Matrix Falsification Major Moderate Minor	
x Percent 10%	
Matrix Notes 100% of the rule requirement was not met.	
Adjustment	\$9,000
	\$1,000
	ψ1,000
Violation Events	
Number of Violation Events 1 37 Number of violation days	
Number of Violation Events 1 1 1 Number of Violation days	
daily	
monthly Violation Base F	Penalty \$1,000
mark only one   quarterly   Violation Base F with an x   semiannual	ψ1,000
annual	
single event x	
One single event is recommended based on documentation of the violation during the Octob 2006 investigation.	er 13,
Economic Benefit (EB) for this violation Statutory Limit Test	
Estimated EB Amount \$4 Violation Final Penalt	y Total \$900
This violation Final Assessed Penalty (adjusted for	mints) \$900

	E	conomic	Benefit W	orks	heet		
Respondent S	S & S USA Ente	erprises, Inc. dba	Berry Food Store		s erzekt i i		SE.
Case ID No. 3	32134				ř 3	nes de Antil	
Reg. Ent. Reference No. F	RN100890979				yer type t		
Media F	Petroleum Stora	age Tank			* * *	Percent Interest	Years of
Violation No. 1	1	_		*	THE TOTAL STATE	i ercent interest	Depreciation
						5.0	15
1000	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description		Date (toquire	, mai zace				
item bescription	INO COMMINS OF T	Contraction of the Contraction o			100		
Delayed Costs							
Equipment				0,0	\$0	\$0	\$0
Buildings				0,0	\$0	\$0	\$0
Other (as needed)	984			0,0	\$0	\$0	\$0
Engineering/construction				0,0	\$0	\$0	\$O
Land [				0,0	\$0	n/a	\$0
Record Keeping System	\$100	13-Oct-2006	1-Aug-2007	0,8	\$4	n/a	\$4
Training/Sampling		1.000000		0,0	\$0	n/a	<b>\$</b> 0
Remediation/Disposal			2000	0.0	\$0	n/a	\$0
Daniel Canta II							
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0,0	\$0 \$0	n/a n/a	\$0 \$0
i i	Estimated cos	t to maintain requ	red Stage II record	0.0 ds, The D	\$0 Pate Required is t	n/a ne date of the invest	\$0
Other (as needed)  Notes for DELAYED costs			Final Date is the e	0.0 ds, The D estimated	\$0 rate Required is to date of complian	n/a ne date of the invest ce,	\$0 ligation and the
Other (as needed)  Notes for DELAYED costs  Avoided Costs			Final Date is the e	ds, The Destimated	\$0 rate Required is to date of compliandate (except for	n/a ne date of the invest ce, one-time avoided o	\$0 igation and the
Other (as needed)  Notes for DELAYED costs  Avoided Costs  Disposal			Final Date is the e	0.0 ds. The Destimated	\$0 ate Required is to date of complianter tem (except for \$0	n/a ne date of the investore, one-time avoided of	\$0 igation and the
Other (as needed)  Notes for DELAYED costs  Avoided Costs  Disposal Personnel			Final Date is the e	ds, The Destimated	\$0  ate Required is to date of compliantem (except for \$0 \$0	n/a ne date of the investore. one-time avoided of \$0 \$0	\$0 igation and the costs) \$0 \$0
Other (as needed)  Notes for DELAYED costs  Avoided Costs  Disposal Personnel Inspection/Reporting/Sampling			Final Date is the e	ds, The Destimated	\$0  rate Required is to date of compliant  item (except for \$0 \$0 \$0 \$0	n/a ne date of the investore, one-time avoided of \$0 \$0 \$0	igation and the
Other (as needed)  Notes for DELAYED costs  AVOIDED COSTS  Disposal Personnel Inspection/Reporting/Sampling Supplies/equipment			Final Date is the e	ds, The Destimated	\$0  pate Required is to date of compliant tem (except for \$0 \$0 \$0 \$0 \$0	n/a ne date of the investore, one-time avoided of \$0 \$0 \$0 \$0	igation and the source
Other (as needed)  Notes for DELAYED costs  AVOIDED COSTS  Disposal Personnel Inspection/Reporting/Sampling Supplies/equipment Financial Assurance [2]			Final Date is the e	ds, The Destimated	\$0  vate Required is to date of compliante (except for \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0	n/a ne date of the investore,  one-time avoided of \$0 \$0 \$0 \$0 \$0	igation and the
Other (as needed)  Notes for DELAYED costs  AVOIDED COSTS Disposal Personnel Inspection/Reporting/Sampling Supplies/equipment Financial Assurance [2] ONE-TIME avoided costs [3]			Final Date is the e	0.0 ds, The Destimated	\$0  late Required is to date of compliante tem (except for \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0	n/a ne date of the investore, one-time avoided of \$0 \$0 \$0 \$0 \$0 \$0 \$0	\$0 igation and the sosts) \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0
Other (as needed)  Notes for DELAYED costs  AVOIDED COSTS  Disposal Personnel Inspection/Reporting/Sampling Supplies/equipment Financial Assurance [2]			Final Date is the e	ds, The Destimated	\$0  vate Required is to date of compliante (except for \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0	n/a ne date of the investore,  one-time avoided of \$0 \$0 \$0 \$0 \$0	\$0 ligation and the sosts) \$0 \$0 \$0 \$0 \$0
Other (as needed)  Notes for DELAYED costs  AVOIDED COSTS  Disposal Personnel Inspection/Reporting/Sampling Supplies/equipment Financial Assurance [2] ONE-TIME avoided costs [3] Other (as needed)			Final Date is the e	0.0 ds, The Destimated	\$0  late Required is to date of compliante tem (except for \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0	n/a ne date of the investore, one-time avoided of \$0 \$0 \$0 \$0 \$0 \$0 \$0	\$0 igation and the sosts) \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0
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Other (as needed)  Notes for DELAYED costs  AVOIDED COSTS  Disposal Personnel Inspection/Reporting/Sampling Supplies/equipment Financial Assurance [2] ONE-TIME avoided costs [3] Other (as needed)			Final Date is the e	0.0 ds, The Destimated	\$0  tate Required is to date of compliante (except for \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0	n/a ne date of the investore, one-time avoided of \$0 \$0 \$0 \$0 \$0 \$0 \$0	\$0 igation and the sosts) \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0
Other (as needed)  Notes for DELAYED costs  AVOIDED COSTS  Disposal Personnel Inspection/Reporting/Sampling Supplies/equipment Financial Assurance [2] ONE-TIME avoided costs [3] Other (as needed)			ed costs before e	0.0 ds, The Destimated	\$0  tate Required is to date of compliante (except for \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0	n/a ne date of the investore, one-time avoided of \$0 \$0 \$0 \$0 \$0 \$0 \$0	\$0 igation and the sosts) \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0

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Screening Date 18-Nov-2006 Docket No. 2006-1983-PST-E	PCW
	Revision 2 (September 2002)
	Revision November 17, 2006
Reg. Ent. Reference No. RN100890979	***************************************
Media [Statute] Petroleum Storage Tank	
Enf. Coordinator Deana Holland	
Violation Number 2  Rule Cite(s) 30 Tex. Admin. Code § 115.244(1) and (3) and Texas Health & Safety Code §	1
Rule Cite(s) 30 Tex. Admin. Code § 115.244(1) and (3) and Texas Health & Safety Code § 382.085(b)	
Violation Description Failed to conduct daily and monthly inspections of the Stage II vapor recovery system.	
Base Penalty	\$10,000
SS. For the supervised. Decomposity and House or Health Mathite	
>> Environmental, Property and Human Health Matrix  Harm	
Release Major Moderate Minor	
OR Actual	
Potential X Percent 10%	
D. D. Sandard M. Christian	
>>Programmatic Matrix Falsification Major Moderate Minor	
Percent 0%	
Human health or the environment will or could be exposed to significant amounts of pollutants which	
Natrix Notes   would not exceed levels that are protective of human health or environmental receptors as a result of	
the violation.	
Adjustment \$9,000	<u>1</u> ·
	\$1,000
Violation Events	
Number of Violation Events 1 37 Number of violation days	
Number of Violation Events	
daily	
monthly	
mark only one quarterly X Violation Base Penalty	\$1,000
with an x semiannual	
annual single event	
	,
One quarterly event is recommended from the October 13, 2006 investigation to the November 18,	
2006 screening date.	
Economic Benefit (EB) for this violation Statutory Limit Test	
Estimated EB Amount \$543 Violation Final Penalty Tota	\$900
This violation Final Assessed Penalty (adjusted for limits	) \$900

c

Reg. Ent. Reference No. F	32134 RN100890979	•				,	
	etroleum Stor	rage Tank				Percent Interest	Years of Depreciation
Violation No. 2	2					5.0	
	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	No commas or \$						
Delayed Costs		* 1.000 B					
Delayed Costs Equipment		1		1 0.0	\$0	\$0 I	\$0
Buildings				0.0	\$0	\$0	<b>\$</b> O
Other (as needed)				0,0	\$0	<b>\$</b> 0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0,0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0,0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0
1 4							
Notes for DELAYED costs							
Avoided Costs	ANN	IUALIZE [1] avoide	d costs before e		Item (except for	one-time avoided o	osts)
Disposal				0.0	\$0	\$0	<b>\$</b> 0
Personnel				0.0	\$0 \$0	\$0 \$0	\$0 \$0
Inspection/Reporting/Sampling				0.0	\$0	\$0 \$0	\$0 \$0
Supplies/equipment				0.0	\$0	\$0 \$0	\$0 \$0
Financial Assurance [2] ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)	\$500	13-Oct-2006	1-Aug-2007	17	\$43	\$500	\$543
Other (as needed)	ΨΟΟΟ	10 000 10	Trug Zoor	J		, <del>V</del>	<b>30.10</b>
Notes for AVOIDED costs	Estimated o					ystem. The Date Ro	equired is the
	850000000000000000000000000000000000000	invention the	late and the Elect	Data is	the estimated date	of compliance	5.79.mar.mar.XAAAAAA

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	Screening Date	18-Nov-2006	Docket	t <b>No.</b> 2006-1983-PST-E	P	CM
		S & S USA Enterprises, I	Inc. dba Berry Food Stor	e	Policy Revision 2 (September	er 2002)
10000000000	Case ID No.				PCW Revision November 1	17, 2006
Reg. E	nt. Reference No.					
		Petroleum Storage Tank				
	Enf. Coordinator					
	Violation Number					
	Rule Cite(s)	30 Tex. Admin. Code	e § 115.248(1) and Tex.	Health & Safety Code § 382.0	)85(b)	
,	Violation Description	of the Stage II equipmen Station represents	nt. Specifically, the respo ative receives training an	poses and correct operation p andent failed to ensure that at all instruction in the operation wem within three months of de d employee.	least one and	
				Bas	se Penalty \$	10,000
>> Environ	mental Property a	ind Human Health M	latrix			
2		Harm				
	Release		e Minor			
OR	Actual			-		
	Potential	X		Percent 10%		
>>Program	matic Matrix					
riogiani	Falsification	Major Moderate	e Minor			
				Percent 0%		
	<u> </u>			<del></del>		
	Human hea	Ith or the environment will	or could be exposed to	significant amounts of polluta	nts which	
	Matrix   would not ex			r environmental receptors as		
	Notes		the violation.			
	1					
				Adjustment	\$9,000	
						\$1,000
						Ψ1,000
Violation E	vents					
		-			***************************************	
	Number of Vi	olation Events 1	3	Number of violation da	ys	
			MANUAL STATE OF THE STATE OF TH			
		daily				
	was de a de e a de	monthly quarterly x		Violation Bas	so Ponalty	\$1,000
	mark only one with an x	quarterly x semiannual		Violation Das	se relially	Ψ1,000
		annual				
		single event				
	One guarde	vrly avant is racommende	d from the October 13-2	006 investigation to the Nove	mber 18	
	One quarte	ny event is recommende	2006 screening date.	500 investigation to the twove	moer to,	
***************************************			<u> </u>			
Economic	Benefit (EB) for th	is violation		Statutory Limit Te	st	
	Fetimato	d EB Amount	\$20	Violation Final Pe	nalty Total	\$900
	Loundte	a ED Amount			_	
			This violation Final	Assessed Penalty (adjusted	for limits)	\$900

Respondent S & S Case ID No. 32134 Reg. Ent. Reference No. RN10 Media Petro Violation No. 3  Ite Item Description No co Delayed Costs Equipment Buildings Other (as needed) Engineering/construction Land Record Keeping System	4 00890979 eleum Stor em Cost		erry Food Store Final Date	Yrs	Interest Saved	Percent Interest 5.0 Onetime Costs	Years of Depreciation 15
Reg. Ent. Reference No. RN10   Media   Petro     Violation No. 3       Ite   Item Description   No. 00     Delayed Costs   Equipment   Buildings     Other (as needed)     Engineering/construction     Land	00890979 eleum Stor em Cost	(Constitution of the Constitution of the Const	Final Date	Yrs	Interest Saved	5.0	Depreclation
Media Petro Violation No. 3  Ite Item Description No co  Delayed Costs  Equipment Buildings Other (as needed) Engineering/construction Land	leum Stor m Cost	(Constitution of the Constitution of the Const	Final Date	Yrs	Interest Saved	5.0	Depreclation
Violation No. 3  Ite Item Description No co Delayed Costs Equipment Buildings Other (as needed) Engineering/construction Land	m Cost	(Constitution of the Constitution of the Const	Final Date	Yrs	Interest Saved	5.0	Depreclation
Delayed Costs  Equipment Buildings Other (as needed) Engineering/construction Land		Date Required	Final Date	Yrs	Interest Saved	L	
Delayed Costs  Equipment Buildings Other (as needed) Engineering/construction Land		Date Required	Final Date	Yrs	Interest Saved	L	
Delayed Costs  Equipment Buildings Other (as needed) Engineering/construction Land						CHEMINE COSTS	EB Amount
Delayed Costs  Equipment Buildings Other (an eeded)  Engineering/construction Land		][][					
Equipment Buildings Other (as needed) Engineering/construction Land		n in				22 - 22 - 22 - 24 - 24 - 24 - 24 - 24 -	
Buildings Other (as needed) Engineering/construction Land				٠,			
Other (as needed) Engineering/construction Land				0.0	\$0	\$0	\$0
Engineering/construction Land				0,0	\$0	\$0	\$0
Land				0.0	\$0	\$0	\$0
				0.0	\$0 \$0	\$0	\$0 \$0
	*******	<u> </u>		0.0	\$0 \$0	n/a n/a	\$0 \$0
	<b>#</b> E00	13-Oct-2006	1-Aug-2007	0.8	\$20	n/a	\$20
	\$500	13-001-2006	1-Aug-2007	0.0	\$0	n/a	\$0
Remediation/Disposal Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0
Notes for DELAYED costs		and t	he Final Date is t	he estim	ated date of comp	e Date Required is the liance.	
Avoided Costs	ANN	UALIZE [1] avoide	d costs perore s	0.0	so	SO I	\$0
Disposal Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0,0	\$0	\$0	\$0
N-4 4 AVOIDED4-							
Notes for AVOIDED costs							
and the second of the last							
Approx. Cost of Compliance		\$500			TOTAL		30.47

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		. 0. C.LICA Eutomodese	***************************************	: <b>No.</b> 2006-1983-PST-E	PC'
	Case ID No. 33	-	Inc. dba Berry Food Store		Policy Revision 2 (September 2 PCW Revision November 17,
Reg. Ent.	Reference No. R				,
		Petroleum Storage Tank	(		
	nf. Coordinator D Violation Number □	Deana Holland			
•	Rule Cite(s)		o & 115 245(2) and Toyas	Health & Safety Code § 382.	085(b)
	<u> </u>	30 Tex. Aditiii). Code	9 110.243(2) and 16xas	Treatiff & Safety Code 3 302.	300(b)
		= n 1/2 %	V 50 04	11	
Viola	ation Description	Falled to verify prop	er operation of the Stage months.	Il equipment at least once ev	aly 12
				Bas	e Penalty \$10
>> Environme	ntal, Property an	id Human Health N	Лatrix		-
	Release	<b>Harm</b> Major Moderat			
OR	Actual Potential	x		Percent 25%	
>>Programma	l l	- V			
1 10g/a/////	Falsification	Major Moderat	te Minor	- (	
				Percent 0%	
Matr	riy Human health	or the environment co	auld be exposed to signific	cant amounts of pollutants whi	ch would
Note	es ex	ceed levels that are pro	otective of human health	or environmental receptors.	
	<u> </u>			Adjustment	\$7,500
				дијачинени	\$2
_					γ Ψ2
Violation Even	its				
	T. T.				
	Number of Viola	ation Events 1	36	Number of violation da	ys
		ation Events 1	36	Number of violation da	ys
	Number of Viola	daily	36	- Consequence	
	Number of Viola	daily	36	Number of violation da  Violation Bas	
	Number of Viola mark only one with an x	daily monthly quarterly semiannual annual x	36	- Consequence	
	Number of Viola mark only one with an x	daily monthly quarterly semiannual annual x single event		Violation Bas	se Penalty \$2
	Number of Viola mark only one with an x	daily monthly quarterly semiannual annual x single event		- Consequence	se Penalty \$2
Economic Ber	Number of Viola mark only one with an x	daily monthly quarterly semiannual annual x single event	led for the 12 month perio	Violation Bas	se Penalty \$2
Economic Ber	Number of Viola  mark only one with an x  One annument (EB) for this	daily monthly quarterly semiannual annual x single event	led for the 12 month perio	Violation Bas	se Penalty \$2

.

Case ID No. 3 Reg. Ent. Reference No. F						1.36 - 5.55	
	Petroleum Stor	rage Tank			and the second	Percent Interest	Years of Depreciation
						5,0	15
	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	No commas or \$	No. 2 Page 1	lede and the large	de e.	tion of the second	d, the	
Delayed Costs_							
Equipment				0,0	\$0	\$0	\$0
Buildings				0,0	\$0	\$0	\$0
Other (as needed)				0.0	<b>\$</b> 0	\$0	\$0
Engineering/construction				0.0	<b>\$</b> 0	\$0 n/a	\$0 \$0
Land		CAN AND THE SAME AND THE SAME		0.0	\$0 \$0	n/a	\$0 \$0
Record Keeping System				0,0	\$0	n/a	\$0 \$0
Training/Sampling Remediation/Disposal				0.0	\$0 \$0	n/a	\$0
Permit Costs		7037807007835000000		0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$O
Notes for DELAYED costs						1900 - 1900 1900 - 1900 1900 - 1900 - 1900	a department
. Avoided Costs	ANN	IUALIZE [1] avoide	ed costs before e	ntering	item (except for	one-time avoided (	costs)
Disposal				0,0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]	4754	10.0 1.000	40.0 1.0000	0.0	\$0 •270	\$0 \$750	\$0 \$822
Other (as needed)	\$750	13-Oct-2005	13-Oct-2006	1.9	\$72	1 9/50	<u>⊅822</u>
Notes for AVOIDED costs	Estimated co		peration of the St estigation and the			e Required is one y he investigation.	ear prior to the

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proceedings to the area of the first to the first the process of the first terms of the f

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Screening Date	18-Nov-2006	Docket I	<b>No.</b> 2006-1983-PST-E	PCW
	•	s, Inc. dba Berry Food Store		Policy Revision 2 (September 2002)
Case ID No.				PCW Revision November 17, 2006
Reg. Ent. Reference No.				
	Petroleum Storage Ta	ınk		
Enf. Coordinator Violation Number	······································			***************************************
Rule Cite(s)				
Violation Description	Failed to post ope equipped with a Stag	rating instructions conspicuo		nser
			Dase	renalty \$10,000
>> Environmental, Property a	***************************************			
Release OR Actual Potential		rate Minor	Percent 10%	
>>Programmatic Matrix				
Falsification	Major Mode	rate Minor		
			Percent 0%	
			gnificant amounts of pollutants environmental receptors as a r	
Committee of the contract of t			Adjustment	\$9,000
				\$1,000
		•		<u> </u>
Violation Events				
Number of Vic	olation Events 1	37	Number of violation days	
Number of vic	Diation Events	31	Nulliber of violation days	•
mark only one with an x	daily monthly quarterly x semiannual annual single event		Violation Base	Penalty \$1,000
One quarterly	y event is recommende	ed from the October 13, 2006 2006 screening date.	investigation date to the Nove	erber 18,
Economic Benefit (EB) for th	is violation		Statutory Limit Test	t
Estimate	d EB Amount	\$6	Violation Final Penal	Ity Total \$900
·		This violation Final As	ssessed Penalty (adjusted fo	or limits) \$900

	E	conomic E	Benefit W	orks/	heet		
		terprises, Inc. dba B	erry Food Store			Enter District	
Case ID No.						1 4 4 4 5 B	18 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
Reg. Ent. Reference No.	RN100890979						
	Petroleum Stor	rage Tank				Percent Interest	Years of
Violation No.	5	***************************************					Depreciation
						5.0	15
	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	No commas or \$						
000000000000000000000000000000000000000	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1			1 -2 -2 7	1.1 (1) NH	7	
Delayed Costs_				_			
Equipment	\$100	13-Oct-2006	1-Aug-2007	0,8	<b>\$</b> O	\$5	\$6
Buildings				0,0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0 \$0	\$0 n/a	\$0 \$0
Land   Record Keeping System				0.0	\$0 \$0	n/a	\$0 \$0
Training/Sampling	Marketon Color			1 0.0	\$0 \$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs		1		0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0
	The estimat	ed cost to nost the c	nerating instruct		sch dieneneer The		
Notes for DELAYED costs		investigation	n and the Final D	ate is the	estimated date o	,	
Avoided Costs		investigation	n and the Final D	ate is the	estimated date of	f compliance.  one-time avoided c	osts)
Avoided Costs Disposal		investigation	n and the Final D	ate is the	estimated date of Item (except for \$0	f compliance, one-time avoided o	costs) \$0
Avoided Costs Disposal Personnel		investigation	n and the Final D	entering	estimated date of them (except for \$0 \$0	f compliance,  one-time avoided c  \$0  \$0	sosts) \$0 \$0
Avoided Costs Disposal Personnel Inspection/Reporting/Sampling		investigation	n and the Final D	entering   0,0   0,0   0,0	e estimated date of the solution is the solution is solution is solution.	f compliance,  one-time avoided of \$0 \$0 \$0 \$0 \$0	\$0 \$0 \$0 \$0
Avoided Costs Disposal Personnel Inspection/Reporting/Sampling Supplies/equipment		investigation	n and the Final D	entering 0.0 0.0 0.0 0.0	estimated date of the state of	f compliance;  one-time avoided of \$0 \$0 \$0 \$0 \$0 \$0 \$0	\$0 \$0 \$0 \$0 \$0
Avoided Costs Disposal Personnel Inspection/Reporting/Sampling Supplies/equipment Financial Assurance [2]		investigation	n and the Final D	entering 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0	e estimated date of the state o	f compliance,  one-time avoided of \$0 \$0 \$0 \$0 \$0	\$0 \$0 \$0 \$0
Avoided Costs Disposal Personnel Inspection/Reporting/Sampling Supplies/equipment Financial Assurance [2] ONE-TIME avoided costs [3]		investigation	n and the Final D	entering 0.0 0.0 0.0 0.0	estimated date of the state of	f compliance.  one-time avoided of \$0	\$0 \$0 \$0 \$0 \$0 \$0 \$0
Avoided Costs Disposal Personnel Inspection/Reporting/Sampling Supplies/equipment Financial Assurance [2] ONE-TIME avoided costs [3] Other (as needed)		investigation	n and the Final D	entering	estimated date or     Item (except for \$0	f compliance.  one-time avoided of \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0	\$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0
Avoided Costs Disposal Personnel Inspection/Reporting/Sampling Supplies/equipment Financial Assurance [2] ONE-TIME avoided costs [3]		investigation	n and the Final D	entering	estimated date or     Item (except for \$0	f compliance.  one-time avoided of \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0	\$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0
Avoided Costs Disposal Personnel Inspection/Reporting/Sampling Supplies/equipment Financial Assurance [2] ONE-TIME avoided costs [3] Other (as needed)		investigation	n and the Final D	entering	estimated date or     Item (except for \$0	f compliance.  one-time avoided of \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0	\$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0
Avoided Costs Disposal Personnel Inspection/Reporting/Sampling Supplies/equipment Financial Assurance [2] ONE-TIME avoided costs [3] Other (as needed)		investigation	n and the Final D	entering	estimated date or     Item (except for \$0	f compliance.  one-time avoided of \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0	\$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0

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Screening Date	18-Nov-2006	Docket N	lo. 2006-1983-PST-E	PCW
		Inc. dba Berry Food Store		Policy Revision 2 (September 2002)
Case ID No.				PCW Revision November 17, 2006
Reg. Ent. Reference No.				
Enf. Coordinator	Petroleum Storage Tank			
Violation Number				
Rule Cite(s)		de § 334.49(a), (c)(2)(C) and 26.3475(d)	d (c)(4) and Tex. Water Cod	e §
Violation Description	impressed current catho the rectifier and other sy failed to inspect and tes	dic protection system at lea stem components were ope	or all USTs. Failed to inspect ist once every 60 days to enserating properly. Also, the res stem for operability and adec by three years.	sure that pondent
			Base	Penalty \$10,000
>> Environmental, Property a	ınd Human Health M	latrix		,
	Harm			***************************************
OR Release	Major Moderate	e Minor		
Potential			Percent 25%	***************************************
				***************************************
>>Programmatic Matrix Falsification	Major Moderato	e Minor		
TaisiiCation	Iviajor iviouerati		Percent 0%	
	1		<u> </u>	
			utants which would exceed le	
			Adjustment	\$7,500
,				\$2,500
Violation Events				
Number of Vio	olation Events 1	37	Number of violation days	3
000 december 2000 de companyo de compa				
	daily monthly			
mark only one	quarterly x		Violation Base	Penalty \$2,500
with an x	semiannual			
	annual single event			
	omigio o conc			
One quarter	rly event is recommended	d from the October 13, 2006 18, 2006 screening date.	investigation date to the No	vember
Economic Benefit (EB) for th	is violation		Statutory Limit Tes	t
Estimate	d EB Amount	\$1,324	Violation Final Pena	ulty Total \$2,250
	· · <u>-                         </u>			
		Inis violation Final As:	sessed Penalty (adjusted fo	or limits) \$2,250

	32134	orpriood, mor and n	(a)				
Media	Petroleum Stor	age Tank			i en un i Penne indices	Percent Interest	Years of Depreciation
10.00						5.0	15
	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	No commas or \$					ţ.	
Delayed Costs							
Equipment				0,0	\$0	\$0	\$0
Buildings				0,0	\$0	\$0	\$0
Other (as needed)						\$0	\$0
Engineering/construction						\$0	<b>\$</b> 0
Land						n/a	\$0
						n/a	\$0
Training/Sampling						n/a	\$0
						n/a	\$0
Permit Costs						n/a	<b>\$</b> O
		,	780	,		n/a s the investigation d	\$40 ate, The Final
Delayed Costs	e Date Required I	s the investigation d	ate, The Final				
Notes for DELAYED costs  Avoided Costs	Estimated o	ost to provide prope	er corrosion protect Date is the esti	etion, The mated da entering	e Date Required I ate of compliance.	s the investigation d	ate, The Final
Notes for DELAYED costs  Avoided Costs Disposal	Estimated o	ost to provide prope	er corrosion protect Date is the esti	otion. The mated da entering	e Date Required I ate of compliance.	s the investigation d	ate: The Final
Notes for DELAYED costs  Avoided Costs  Disposal  Personnel	Estimated o	ost to provide prope	er corrosion protec Date is the esti ed costs before e	entering	e Date Required I ate of compliance.  Item (except for \$0 \$0	s the investigation done-time avoided (	ate. The Final
Notes for DELAYED costs  AVOIDED COSTS Disposal Personnel Inspection/Reporting/Sampling	Estimated o	ost to provide prope	er corrosion protec Date is the esti ed costs before e	entering  0.0  0.0  0.0  0.2	e Date Required I ate of compliance. Item (except for \$0 \$0 \$4	s the investigation d  one-time avoided o	ate. The Final costs)
Notes for DELAYED costs  AVOIDED COSTS Disposal Personnel Inspection/Reporting/Sampling Supplies/equipment	Estimated o	ost to provide prope	er corrosion protec Date is the esti ed costs before e	entering  0.0 0.0 0.2 0.0	e Date Required I ate of compliance.  Item (except for \$0 \$0 \$4 \$4	s the investigation d one-time avoided o \$0 \$0 \$80	ate. The Final
Notes for DELAYED costs  Avoided Gosts Disposal Personnel Inspection/Reporting/Sampling Supplies/equipment Financial Assurance [2]	Estimated o	ost to provide prope	er corrosion protec Date is the esti ed costs before e	entering  0.0 0.0 0.0 0.0 0.0 0.0	e Date Required I ate of compilance:  Item {except for \$0 \$0 \$4 \$4 \$0 \$0 \$0 \$0	one-time avoided of \$0 \$0 \$84 \$0	ate, The Final costs) \$0 \$0 \$88 \$0
Avoided Costs  Disposal Personnel Inspection/Reporting/Sampling Supplies/equipment Financial Assurance [2] ONE-TIME avoided costs [3]	ANN \$500	UALIZE [1] avoide	or corrosion protect Date is the estil ed costs before e	entering 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0	e Date Required I ate of compliance:    Item (except for \$0 \$0 \$0 \$4 \$4 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0	one-time avoided of \$0 \$0 \$0 \$84 \$0 \$0 \$0	ate. The Final costs) \$0 \$0 \$0 \$88 \$0 \$0
Avoided Costs Disposal Personnel Inspection/Reporting/Sampling Supplies/equipment Financial Assurance [2] ONE-TIME avoided costs [3] Other (as needed)	ANN \$500 \$1,000 Avoided cos months prior to	iJALIZE [1] avoide 13-Aug-2006 13-Oct-2003 1 t of conducting bim to the investigation of	pr corrosion protect Date is the estilled costs before a 13-Oct-2006    13-Oct-2006    13-Oct-2006    onthly inspection late and the Final ulred is three year	entering.  O.0  O.0  O.0  O.0  O.0  O.0  O.0  O	e Date Required I ate of compliance:  Item {except for \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$196 \$196 \$196 \$196 \$196 \$196 \$196 \$196	one-time avoided of \$0 \$0 \$0 \$84 \$0 \$0 \$0 \$1,000 \$system. The Date Riate. Avoided cost of	ate, The Final  Costs)  \$0  \$88  \$0  \$0  \$1.196 equired is two f completing the

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Screening D	Date 18-Nov-2006	Docket No. 2	006-1983-PST-E	PCW
The second secon	<b>dent</b> S & S USA Enterprises, Ir	nc. dba Berry Food Store	Policy F	Revision 2 (September 2002)
	No. 32134		PCW F	Revision November 17, 2006
Reg. Ent. Reference				
	ute] Petroleum Storage Tank			
Ent. Coordin Violation Nur	ator Deana Holland			
Rule Ci		334.50(a)(1)(A), (b)(1)(A), (b)(2	)) and (b)(2)(A)(i)(III) and Tex	
Nuie Oi		Water Code § 26.3475(a) and	(c)(1)	
Violation Descri	portion of the UST system for releases at a frequence each monitoring). Failed UST system. Specificall test. In addition, the res year for performance and	y of at least once every month to provide release detection fo y, the respondent did not condi pondent failed to test the line le	stances. Failed to monitor USTs (not to exceed 35 days between r the piping associated with the act the annual piping tightness ask detectors at least once per ally, the line leak detectors had	
			Base Penalty	\$10,000
>> Environmental, Prope	erty and Human Health Ma	atrix		
	Harm			
	lease Major Moderate Actual	Minor Ninor		
	ential x	<del> </del>	Percent 25%	
>>Programmatic Matrix				
Falsific	ation Major Moderate	Minor		
		F	Percent 0%	
Matrix Notes Human		r could be exposed to pollutants or environmental receptors as	s which would exceed levels tha a result of the violation.	t
		Δd	ljustment \$7,500	7
		r.	γι,ους	<u></u>
				\$2,500
Violation Events				
	1	37	Number of violation days	
mark oni with a	-		Violation Base Penalty	\$2,500
One o	quarterly event is recommended screen	based on the investigation dating date of November 18, 2006		
Economic Benefit (EB) f	or this violation		Statutory Limit Test	
			***************************************	
Esti	mated EB Amount	\$1,180	Violation Final Penalty Tota	\$2,250
		This violation Final Assess	ed Penalty (adjusted for limits	\$2,250

Rea. Ent. Reference No.							
		age Tank			1000		Years of
		ago rank			e ga kolida Hali.	Percent Interest	Depreciati
						5.0	9 J. W.
	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amou
Item Description	No commas or \$					·	
Delayed Costs	11.			. 1		21	
Equipment				0,0	\$0	\$0	\$0
Buildings							\$0
							\$0
	\$1,500	13-Oct-2006	1-Aug-2007				\$84
							\$0
							\$0
							\$0 \$0
							\$0 \$0
							\$0 \$0
Notes for DELAYED costs	The estimated						ivestigation
Item Cost   Date Required   Final Date   Yrs   Interest Saved   Onetime Costs	osts)						
Disposal				0.0	\$0	\$0	\$0
							\$0
							\$0
							\$0
							\$0
	#4 000	40 0+ 0000	42.04.2000				\$0 \$1,096
Other (as needed)	\$1,000	13-UCI-2005	13-00(-2006	<u>JL1.9</u>	1 290	1 \$1,000 1	<u> </u>
Notes for AVOIDED costs	The estimated						ilred is one
***							

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Screening Date	500000000000000000000000000000000000000	Docket No. 2006-1983	-PST-E	PCW
F	S & S USA Enterprises, Inc. dba Be	erry Food Store	•	vision 2 (September 2002)
Case ID No.			PCW Re	vision November 17, 2006
Reg. Ent. Reference No.		•		
Enf. Coordinator	Petroleum Storage Tank			***************************************
Violation Number	***************************************			
Rule Cite(s)	<del>                                     </del>	Admin Code (2004 40/s)		
	30 Tex.	Admin. Code § 334.48(c)		
Violation Description	Failed to conduct effective manu UST involved in the retail sale	al or automatic inventory contro e of petroleum substances used	(1) (1) (1) (1) (1) (1) (1) (1) (1) (1)	
			Base Penalty	\$10,000
>> Environmental, Property a	nd Human Health Matrix		4.00	water
Release	<b>Harm</b> Major Moderate Min	or		***************************************
OR Actual Potential		Percent	25%	
>>Programmatic Matrix				or a second
Falsification	Major Moderate Mir	Percent	0%	
	th or the environment could be exposed levels that are protective of the country			
		Adjustment	\$7,500	******
				\$2,500
Violation Events			- 17 Page 10 Page 12 P	
	1	37 Number of	violation days	***************************************
	daily	Security and the securi	•	
mark only one with an x	monthly quarterly x semiannual annual single event	V	iolation Base Penalty[	\$2,500
One quarter	ly event is recommended based on 2006 investigation to the No	documentation of the violation overhear 18, 2006 screening dat		
Economic Benefit (EB) for th	is violation	Statutor	y Limit Test	
Estimate	d EB Amount	\$20 Violation	on Final Penalty Total	\$2,250
		olation Final Assessed Penalt	y (adjusted for limits)	\$2,250

Cost Date Required	Final Date	Yrs	Interest Saved	5.0 Onetime Costs	Depreciation 15 EB Amount	
	Final Date	Yrs	Interest Saved	<u> </u>		
	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount	9
ias of \$						
4.2	3					ė
		0.0	\$0	\$0	\$0	
		0,0	\$0	\$0	\$0	
		0,0	\$0	\$0	<b>\$</b> 0	1
		0,0	\$0	\$0	\$0	
		0,0	\$0	n/a	\$0	
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		0.0	\$0	\$0	<b>\$</b> 0	1
		0.0	\$0	\$0	\$O	
700000		0.0	\$0	\$0	\$0	]
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		ted cost to conduct the required inventory of Final date is est	ted cost to conduct the required Inventory control. The Final date is estimated do  ANNUALIZE [1] avoided costs before entering 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.0 0.	0.0 \$0   0		0.0 \$0   n/a \$0   n/a \$0   0.0 \$0   0.0 \$0   0.0 \$0   0.0 \$0   0.0 \$0   0.0 \$0   0.0 \$0 \$0   0.0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0

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general (1975) (1975) (1984) grade (1984) a technic Beneral (1975) (1975) (1984) grade (1985) (1985) grade (1985) Beneral (1985) (1985) (1985) (1985) (1985)

Scre	ening Date	18-Nov-2006	Doc	ket No. 2006-1983-PST-E	PCW
	William Committee to Administration Committee and Committe	S & S USA Enterprises,	Inc. dba Berry Food S	Store	Policy Revision 2 (September 2002)
	Case ID No. :				PCW Revision November 17, 2006
Reg. Ent. Ref			l <sub>e</sub>		
	oordinator	Petroleum Storage Tan Deana Holland	K		
	ation Number	9			
	Rule Cite(s)	30 Tex. Adn	nin. Code § 334.7(d)(3	, 334.8(c)(4)(B) and (c)(5)(B)(ii)	
Violatio	n Description	Commission within 30 of within 30 days of the change or addition information to reflect the to timely renew a precompleted UST reg	days from the date of the date on which the own specifically, the respine current operator informations is sued UST designation and self-certification and self-	nange or additional information to ne occurrence of the change or a er or operator first becomes awa condent did not update the registr ormation. In addition, the respond livery certificate by submitting a ication form at least 30 days before cifically, the delivery certificate et 1, 2006.	addition, or re of the ration dent failed properly ore the
				Bas	se Penalty \$10,000
>> Environmental	l Property a	nd Human Health I	Matrix		
		Harm			
OR	Release Actual	Major Modera	te Minor		
OK	Potential			Percent 0%	
				<b></b>	
>>Programmatic			. Mina		
	Falsification	Major Modera	te Minor	Percent 10%	
Matrix Notes		100% (	of the rule requirement	was not met.	
53000				Adjustment	\$9,000
			·	-	\$1,000
					\$1,000
Violation Events					
	Number of Vic	lation Events 1		255 Number of violation da	ays
000000000000000000000000000000000000000		daily			
	mark only one	monthly quarterly		Violation Ba	se Penalty \$1,000
	with an x	semiannual			
-	•	annual	10000000000000000000000000000000000000		
**************************************		single event x			
	One single	event is recommended	based on documenta 2006 investigation	ion of the violation during the Oc	tober 13,
- Constitution of the Cons			9		
Economic Benef	it (EB) for th	is violation		Statutory Limit To	
	Estimate	d EB Amount	\$4	Violation Final Pe	enalty Total \$90
			This violation Fi	nal Assessed Penalty (adjusted	d for limits) \$90

	a Petroleum Stor	age Tank				Percent Interest	Years of
Violation No	i. 9					5.0	Depreciation 1
	Item Cost	Date Required	Final Date	Yrs	Interest Saved	3	EB Amount
Item Descriptio	n No commas or \$						
	ang sa ang ang ang ang				,		
Delayed Cost	8	ll		1			0.0
Equipment Buildings		3555		0,0	\$0 \$0	\$0 \$0	\$0 \$0
Other (as needed)				0.0	\$0 \$0	\$0	\$0 \$0
Engineering/construction				0.0	\$0	\$0 \$0	\$0 \$0
Land	300000000000000000000000000000000000000			0.0	\$0 \$0	n/a	\$0 \$0
Record Keeping System	***************************************			0.0	\$0	n/a	\$0
Training/Sampling	5507.57465.57666.67			0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs			88.2013.000.000.000	0.0	\$0	n/a	\$0
Other (as needed)	\$100	13-Sep-2006	1-Aug-2007	0.9	\$4	n/a	\$4
					T. B B	11 00 1 1 6	
Notes for DELAYED costs	The estimated				i. The Date Requi	red is 30 days befor of compliance.	e the date of th
Notes for DELAYED costs  Avoided Cost		investigation	n and the Final Da	ate is the	estimated date of the litem (except for	one-time avoided c	osts)
Avoided Cost		investigation	n and the Final Da	ntering	estimated date of Item (except for \$0	of compliance.  one-time avoided of	osts) \$0
Avoided Cost Disposal Personnel		investigation	n and the Final Da	ntering	estimated date of item (except for \$0 \$0	one-time avoided of \$0 \$0	\$0 \$0
Avoided Cost Disposal Personnel Inspection/Reporting/Sampling		investigation	n and the Final Da	ntering 0.0 0.0 0.0	estimated date of ltem (except for \$0 \$0 \$0	one-time avoided of \$0 \$0 \$0 \$0	\$0 \$0 \$0 \$0
Avoided Cost Disposal Personnel Inspection/Reporting/Sampling Supplies/equipment		investigation	n and the Final Da	ntering   0.0   0.0   0.0   0.0   0.0	estimated date of the state of	one-time avoided of \$0 \$0 \$0 \$0 \$0 \$0	\$0 \$0 \$0 \$0 \$0
Avoided Cost Disposal Personnel Inspection/Reporting/Sampling Supplies/equipment Financial Assurance [2]		investigation	n and the Final Da	ntering   0.0   0.0   0.0   0.0   0.0	estimated date of the following states of the states of th	one-time avoided of \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0	\$0 \$0 \$0 \$0 \$0 \$0 \$0
Avoided Cost Disposal Personnel Inspection/Reporting/Sampling Supplies/equipment Financial Assurance [2] ONE-TIME avoided costs [3]		investigation	n and the Final Da	ntering   0.0   0.	estimated date of the following setting settin	one-time avoided of \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0	\$0 \$0 \$0 \$0 \$0 \$0 \$0
Avoided Cost Disposal Personnel Inspection/Reporting/Sampling Supplies/equipment Financial Assurance [2]		investigation	n and the Final Da	ntering   0.0   0.0   0.0   0.0   0.0	estimated date of the following states of the states of th	one-time avoided of \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0	\$0 \$0 \$0 \$0 \$0 \$0 \$0
Avoided Cost Disposal Personnel Inspection/Reporting/Sampling Supplies/equipment Financial Assurance [2] ONE-TIME avoided costs [3]		investigation	n and the Final Da	ntering   0.0   0.	estimated date of the following setting settin	one-time avoided of \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0	\$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0

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March 1. 11 February

Screening Date	18-Nov-2006	Docket N	<b>lo.</b> 2006-1983-PST-E	PCW
	S & S USA Enterprises, Inc	. dba Berry Food Store	Polic	/ Revision 2 (September 2002)
Case ID No. :			PCV	V Revision November 17, 2006
Reg. Ent. Reference No.				and in contract
Enf. Coordinator	Petroleum Storage Tank Deana Holland			
Violation Number	10			***************************************
Rule Cite(s)	30 Tex Admin Code	8 334 8(c)(5)(A)(i) and	Tex. Water Code § 26.3467(a)	
l l	OU TOX. / Idilini. Odde	2 2 00 yelloWoM Will aria		
Violation Description	accepting delivery of a regu	o a common carrier a va ulated substance into the accepted without a deliv	ilid, TCEQ delivery certificate before USTs. Specifically one fuel deliverery certificate.	e ry
L			Base Pena	ty \$10,000
>> Environmental, Property a	nd Human Health Mat	rix		
	Harm		-	
Release OR Actual	Major Moderate	Minor		
Potential		X	Percent 5%	
IL			\$ <b>\$</b>	
>>Programmatic Matrix		14		
Falsification	Major Moderate	Minor	Percent 0%	
<u> </u>		<u>  (2000)                                 </u>	070	
Matrix Notes Human health would not exc	or the environment will or coed levels that are protecti	could be exposed to insi	gnificant amounts of pollutants whi nvironmental receptors as a result  Adjustment \$9,5	of
				\$500
Violation Events				
Number of Vio	olation Events 1	1	Number of violation days	***************************************
		a	-	***************************************
,	daily			
mark only one with an x	monthly quarterly semiannual annual single event x		Violation Base Pena	lty \$500
	One single even	t (one per fuel drop) is re	ecommended.	
Economic Benefit (EB) for thi			Statutory Limit Test	
Estimated	d EB Amount	\$0	Violation Final Penalty To	tal \$450
		This violation Final As	sessed Penalty (adjusted for lim	ts) \$450

Media Violation No	RN100890979 Petroleum Sto			1.47	estricion a final	Percent Interest	Years of Depreciation	
Violation No	, 1U				\$2. I	5.0	15	ĺ
	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount	
Item Description	No commas or \$							
Delayed Cost			gar - Corona de Cara					
Delayed Cosu Equipment	•	1 1		0.0	\$0	\$0	\$0	ĺ
Buildings				0.0	\$0	\$0	\$0	l
Other (as needed)				0.0	\$0	\$0	\$0	l
Engineering/construction				0,0	\$0	\$0	\$0	l
Land				0,0	\$0	n/a	\$0	ı
Record Keeping System				0.0	\$0	n/a	\$0	ĺ
Training/Sampling				0,0	\$0	n/a	\$0	ĺ
Remediation/Disposal				0.0	\$0	n/a	\$0	l
Permit Costs Other (as needed)				0.0	\$0 \$0	n/a n/a	\$0 \$0	ĺ
Notes for DELAYED costs			Economic benefi	t included	d in Violation No.	9,		
Avoided Cost	ANN	JUALIZE [1] avoide	ed costs before	enterina	Item (except for	one-time avoided (	osts)	
Disposal				0.0	\$0	\$0	\$0	1
Personnel				0.0	\$0	\$0	\$0	ĺ
spection/Reporting/Sampling				0.0	\$0	\$0	\$0	ĺ
Supplies/equipment				0.0	\$0	\$0	\$0	1
Financial Assurance [2]				0,0	\$0	\$0	\$0	
				0.0	\$0	\$0	\$0	ĺ
ONE-TIME avoided costs [3]	100004000000000000000000000000000000000			0.0	\$0	\$0	\$0	١

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## Compliance History

Customer	Respondent/Owner-Operator:	CN603115056	S & S USA Enterprises, Inc.		Classification: HI	3H	Rating: 0.00	
Regulated Entity:		RN100890979	BERRY FOOD STORE		Classification: HIG	ЭН	Site Rating: 0.00	
ID Number(s):		AIR NEW SOURCE PERMITS PETROLEUM STORAGE TANK REGISTRATION		ACCOUNT NUMBER REGISTRATION			HG7713P 37926	
Location:		516 BERRY RD, HOUSTON, TX, 77022		Rating Date: September NO		ember 01 06	01 06 Repeat Violator:	
TCEQ Re	gion:	REGION 12 - HO	USTON					
Date Compliance History Prepared:		November 20, 20	06					
Agency Decision Requiring Compliance History:		Enforcement						
Compliance Period:		November 20, 20	01 to November 20, 2006					
TCEQ Sta	aff Member to Contact for Additional Infor	mation Regarding this	Compliance History	10.00				
Name:	Deana Holland	Pt	none: 239-2504					
		Site	Compliance History Comp	onents	•			
1. Has the	e site been in existence and/or operation t			Yes				
	ere been a (known) change in ownership			No				
3. If Yes,	who is the current owner?			N/A				
4. if Yes,	who was/were the prior owner(s)?			N/A				
5. When	did the change(s) in ownership occur?			N/A			<del>-</del>	
Compor	ents (Multimedia) for the Site :							
A.	Final Enforcement Orders, court judger	nents, and consent de	ecrees of the state of Texas and	i the federal gov	vernment.			
	N/A							
_		T	1					
В.	Any criminal convictions of the state of N/A	lexas and the redera	i government.					
C.	Chronic excessive emissions events.							
<b>J</b> .	N/A							
D.	The approval dates of investigations. (0	CCEDS Inv. Track. No	).)					
<b>.</b>	1 08/27/2002 (9924) 2 11/09/2006 (517072)	,	·· <b>·</b>					
E.	Written notices of violations (NOV). (Co	CEDS Inv. Track. No.	)					
	N/A				•			
_	•							
F.	Environmental audits. N/A							
G.	Type of environmental management sy	rstems (EMSs).						
	N/A							
Ĥ.	Voluntary on-site compliance assessm	ent dates.						
	N/A							
1.	Participation in a voluntary pollution re-	duction program.					*	
	N/A							
J.	Early compliance.							
	N/A							
Sites Ou	tside of Texas							
	N/A							

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### Texas Commission on Environmental Quality



IN THE MATTER OF AN	§	BEFORE THE
ENFORCEMENT ACTION	§ §	
CONCERNING	§	
S & S USA ENTERPRISES, INC. DBA	§	TEXAS COMMISSION ON
BERRY FOOD STORE	§	
RN100890979	§	ENVIRONMENTAL QUALITY

#### AGREED ORDER DOCKET NO. 2006-1983-PST-E

#### I. JURISDICTION AND STIPULATIONS

At its \_\_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding S & S USA Enterprises, Inc. dba Berry Food Store ("S & S USA") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and S & S USA appear before the Commission and together stipulate that:

- 1. S & S USA owns and operates a convenience store with retail sales of gasoline at 516 Berry Road in Houston, Harris County, Texas (the "Station").
- 2. S & S USA's three underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. The Station consists of one or more sources as defined in Tex. Health & Safety Code § 382.003(12).
- 3. The Commission and S & S USA agree that the Commission has jurisdiction to enter this Agreed Order, and that S & S USA is subject to the Commission's jurisdiction.
- 4. S & S USA received notice of the violations alleged in Section II ("Allegations") on or about November 14, 2006.
- 5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by S & S USA of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

•

6. An administrative penalty in the amount of Thirteen Thousand Nine Hundred Fifty Dollars (\$13,950) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). S & S USA has paid Three Hundred Ten Dollars (\$310) of the administrative penalty and Two Thousand Seven Hundred Ninety Dollars (\$2,790) is deferred contingent upon S & S USA's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If S & S USA fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require S & S USA to pay all or part of the deferred penalty.

The remaining amount of Ten Thousand Eight Hundred Fifty Dollars (\$10,850) of the administrative penalty shall be payable in 35 monthly payments of Three Hundred Ten Dollars (\$310) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If S & S USA fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of S & S USA to meet the payment schedule of this Agreed Order constitutes the failure by S & S USA to timely and satisfactorily comply with all the terms of this Agreed Order.

- 7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
- 8. The Executive Director of the TCEQ and S & S USA have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
- 9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that S & S USA has not complied with one or more of the terms or conditions in this Agreed Order.
- 10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
- 11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

#### II. ALLEGATIONS

As owner and operator of the Station, S & S USA is alleged to have:

1. Failed to maintain all required Stage II records on-site and make immediately available for review upon request by a TCEQ representative, in violation of 30 Tex. ADMIN. CODE § 115.246(1), (3), (5) and (7)(A) and Tex. Health & Safety Code § 382.085(b), as documented during an investigation conducted on October 13, 2006. Specifically, S & S USA failed to maintain a copy of the California Air Resources Board (CARB) Executive Order(s) for the Stage II vapor recovery

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- 2. Failed to conduct daily and monthly inspections of the Stage II vapor recovery system, in violation of 30 Tex. ADMIN. CODE § 115.244(1) and (3), and Tex. Health & Safety Code § 382.085(b), as documented during an investigation conducted on October 13, 2006.
- 3. Failed to make each employee aware of the purposes and correct operation procedures of the Stage II equipment, in violation of 30 Tex. ADMIN. CODE § 115.248(1) and Tex. Health & Safety Code § 382.085(b), as documented during an investigation conducted on October 13, 2006. Specifically, S & S USA failed to ensure that at least one Station representative receives training and instruction in the operation and maintenance of the Stage II vapor recovery system within three months of departure of the previously trained employee.
- 4. Failed to verify proper operation of the Stage II equipment at least once every 12 months, in violation of 30 Tex. ADMIN. CODE § 115.245(2) and Tex. Health & Safety Code § 382.085(b), as documented during an investigation conducted on October 13, 2006.
- 5. Failed to post operating instructions conspicuously on the front of each dispenser equipped with a Stage II system, in violation of 30 Tex. ADMIN. CODE § 115.242(9) and Tex. Health & Safety Code § 382.085(b), as documented during an investigation conducted on October 13, 2006. Specifically, at the time of the investigation the proper operating instructions were not observed on any dispensers.
- 6. Failed to provide proper corrosion protection for all USTs, in violation of 30 Tex. ADMIN. CODE § 334.49(a) and Tex. WATER CODE § 26.3475(d), as documented during an investigation conducted on October 13, 2006.
- 7. Failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components were operating properly, in violation of 30 Tex. Admin. Code § 334.49(c)(2)(C) and Tex. Water Code § 26.3475(d), as documented during an investigation conducted on October 13, 2006.
- 8. Failed to inspect and test the cathodic protection system for operability and adequacy of protection at least once every three years, in violation of 30 TEX. ADMIN. CODE § 334.49(c)(4) and TEX. WATER CODE § 26.3475(d), as documented during an investigation conducted on October 13, 2006.
- 9. Failed to provide a release detection method capable of detecting a release from any portion of the UST system which contained regulated substances, in violation of 30 Tex. ADMIN. CODE § 334.50(a)(1)(A) and Tex. WATER CODE § 26.3475(c)(1), as documented during an investigation conducted on October 13, 2006.
- 10. Failed to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), in violation of 30 Tex. ADMIN. CODE § 334.50(b)(1)(A) and Tex. Water Code § 26.3475(c)(1), as documented during an investigation conducted on October 13, 2006.

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- 11. Failed to provide release detection for the piping associated with the UST system, in violation of 30 Tex. ADMIN. CODE § 334.50(b)(2) and Tex. WATER CODE § 26.3475(a), as documented during an investigation conducted on October 13, 2006.
- 12. Failed to test the line leak detectors at least once per year for performance and operational reliability, in violation of 30 Tex. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and Tex. WATER CODE § 26.3475(a), as documented during an investigation conducted on October 13, 2006. Specifically, the line leak detectors had not been performance tested annually.
- 13. Failed to conduct effective manual or automatic inventory control procedures for the UST involved in the retail sale of petroleum substances used as a motor fuel, in violation of 30 TEX. ADMIN. CODE § 334.48(c), as documented during an investigation conducted on October 13, 2006.
- 14. Failed to provide written notice of any change or additional information to the Commission within 30 days from the date of the occurrence of the change or addition, or within 30 days of the date on which the owner or operator first becomes aware of the change or addition, in violation of 30 Tex. Addin. Code § 334.7(d)(3), as documented during an investigation conducted on October 13, 2006. Specifically, S & S USA did not update the registration information to reflect the current operator information.
- 15. Failed to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date of the delivery certificate, in violation of 30 Tex. ADMIN. Code § 334.8(c)(4)(B) and (c)(5)(B)(ii), as documented during an investigation conducted on October 13, 2006. Specifically, the delivery certificate expired on January 31, 2006.
- 16. Failed to make available to a common carrier a valid, TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs, in violation of 30 TEX. ADMIN. CODE § 334.8(c)(5)(A)(i) and TEX. WATER CODE § 26.3467(a), as documented during an investigation conducted on October 13, 2006. Specifically, one fuel delivery was accepted without a delivery certificate.

#### III. DENIALS

S & S USA generally denies each allegation in Section II ("Allegations").

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#### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that S & S USA pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and S & S USA's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: S & S USA Enterprises, Inc. dba Berry Food Store, Docket No. 2006-1983-PST-E" to:

Financial Administration Division, Revenues Section Attention: Cashier's Office, MC 214 Texas Commission on Environmental Quality P.O. Box 13088 Austin, Texas 78711-3088

- 2. It is further ordered that S & S USA shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Agreed Order:
    - i. Cease accepting fuel until such time as a valid delivery certificate is obtained from the TCEQ by submitting a properly completed UST registration and self-certification form, in accordance with 30 TEX. ADMIN. CODE § 334.8;
    - ii. Begin maintaining Stage II records, in accordance with 30 TEX. ADMIN. CODE § 115.246; and
    - iii. Begin conducting effective manual or automatic inventory control procedures for the UST, in accordance with 30 TEX. ADMIN. CODE § 334.48.
  - b. Within 30 days after the effective date of this Agreed Order:
    - i. Begin conducting required daily and monthly inspections of the Stage II vapor recovery system, in accordance with 30 Tex. ADMIN. CODE § 115.244;
    - ii. Conduct training to make every employee aware of the purposes and correct operation procedures of the Stage II System, in accordance with 30 Tex. ADMIN. CODE § 115.248;
    - iii. Conduct the annual testing of the Stage II equipment, in accordance with 30 TEX. ADMIN CODE § 115.245;
    - iv. Post operating instructions conspicuously on the front of each dispenser equipped with a Stage II system, in accordance with 30 TEX. ADMIN CODE § 115.242;
    - v. Implement a corrosion protection method for all USTs at the Station, in accordance with 30 TEX. ADMIN. CODE § 334.49; and

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- vi. Implement a release detection method for all USTs at the Station, in accordance with 30 TEX. ADMIN. CODE § 334.50.
- c. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a.i. through 2.b.vi.

The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team Enforcement Division, MC 149A Texas Commission on Environmental Quality P.O. Box 13087 Austin, Texas 78711-3087

with a copy to:

Waste Section Manager Houston Regional Office Texas Commission on Environmental Quality 5425 Polk Avenue, Suite H Houston, Texas 77023-1486

- 3. The provisions of this Agreed Order shall apply to and be binding upon S & S USA. S & S USA is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Station operations referenced in this Agreed Order.
- 4. If S & S USA fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, S & S USA's failure to comply is not a violation of this Agreed Order. S & S USA shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. S & S USA shall notify the Executive Director within seven days after S & S USA becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
- 5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by S & S USA shall be made in

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writing to the Executive Director. Extensions are not effective until S & S USA receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

- 6. This Agreed Order, issued by the Commission, shall not be admissible against S & S USA in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
- 7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
- 8. Under 30 Tex. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to S & S USA, or three days after the date on which the Commission mails notice of the Order to S & S USA, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

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#### SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission	
John Fralin	711107
For the Executive Director	Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEO seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Signature

Date

Date

| Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date | Date

S & S USA Enterprises, Inc. dba Berry Food Store

**Instructions**: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

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